

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

The ALJ's written Order appointed a doctor to conduct an independent medical examination of claimant and then address specific issues including whether claimant's condition is causally related to her work duties.

The ALJ's decision to have an independent medical examination performed on the claimant is interlocutory in nature and made during the litigation of a workers compensation case pending before the ALJ. The portion of the Order now before the Board pertains to an interlocutory matter, ordering an independent medical examination, over which an ALJ has authority to order during the litigation of the case. The Order did not address claimant's request for preliminary hearing benefits as it simply provided for an independent medical evaluation.

It is not uncommon for the workers compensation judges to take preliminary hearing requests under advisement while waiting for independent medical evaluations. The Act gives the workers compensation judges the authority to obtain independent medical evaluations to assist them in their decisions. When ordered, such evaluations shall be considered by the judges.<sup>1</sup> Judge Klein did not specifically announce that he was taking claimant's request for preliminary hearing benefits under advisement until receiving the independent medical evaluation report, but as a practical matter that is what occurred. Consequently, the August 12, 2011, Order did not determine the compensability of the left upper extremity claim.

Because the ALJ did not exceed his jurisdiction and authority in appointing a doctor to perform an independent medical evaluation, the Board does not have the jurisdiction and authority to review that portion of the Order.<sup>2</sup>

The Board's jurisdiction to review appeals is governed by K.S.A. 44-534a and K.S.A. 44-551. Those statutes grant the Board the jurisdiction to review: (1) certain preliminary hearing findings; and, (2) final orders and awards. Neither statute grants the Board the authority to review the interlocutory order now in issue.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>3</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member,

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<sup>1</sup> K.S.A. 44-516.

<sup>2</sup> The ALJ determined there was timely notice but on appeal the respondent only raised and briefed the issue whether claimant suffered a compensable injury to her left wrist.

<sup>3</sup> K.S.A. 44-534a.

as permitted by K.S.A. 2010 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>4</sup>

**WHEREFORE**, it is the finding of this Board Member that the application for review filed by the respondent is dismissed as the Board lacks jurisdiction to review the Order of Administrative Law Judge Thomas Klein dated August 12, 2011.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of October, 2011.

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HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

c: R. Todd King, Attorney for Claimant  
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge

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<sup>4</sup> K.S.A. 2010 Supp. 44-555c(k).